



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC - 4 2014

OFFICE OF WATER

The Honorable Jeff Flake
United States Senate
Washington, D.C. 20510

Dear Senator Flake:

Thank you for your May 6 and October 24, 2014, letters to the U.S. Environmental Protection Agency regarding the U.S. Department of the Army's and the EPA's proposed rulemaking to define the scope of the Clean Water Act consistent with science and the decisions of the Supreme Court. The agencies' current notice and comment rulemaking process is among the most important actions we have underway to ensure reliable sources of clean water on which Americans depend for public health, a growing economy, jobs, and a healthy environment.

I appreciate your concern regarding the importance of working effectively with the public, and particularly stakeholders in the desert Southwest, as the rulemaking process moves forward. In order to afford the public greater opportunity to benefit from the EPA Science Advisory Board's reports on the proposed jurisdictional rule and on the EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," and to respond to requests from the public for additional time to provide comments on the proposed rule, the agencies extended the public comment period on the proposed rule to November 14, 2014.

During the public comment period, the agencies met with stakeholders across the country to facilitate their input on the proposed rule. We talked with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. In October 2014, the EPA conducted a second small business roundtable to facilitate input from the small business community, which featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. Since releasing the proposal in March, the EPA and the Corps conducted unprecedented outreach to a wide range of stakeholders, holding nearly 400 meetings all across the country to offer information, listen to concerns, and answer questions. The agencies recently completed a review by the Science Advisory Board on the scientific basis of the proposed rule and will ensure the final rule effectively reflects its technical recommendations. These actions represent the agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

It is important to emphasize that the proposed rule would reduce the scope of waters protected under the Clean Water Act compared to waters covered during the 1970s, 80s, and 90s to conform to decisions of the Supreme Court. The rule would limit Clean Water Act jurisdiction only to those types of waters that have a significant effect on downstream traditional navigable waters - not just any hydrologic connection. It would improve efficiency, clarity, and predictability for all landowners, including the nation's farmers, as well as permit applicants, while maintaining all current exemptions and protecting

public health, water quality, and the environment. It uses the law and sound, peer-reviewed science as its cornerstones.

Your letters express specific concerns regarding the impact of the agencies' proposed rule on Arizona and on the desert Southwest, with special focus on water features that do not flow all the time and on manmade water distribution systems. With respect to streams, the agencies' proposed rule would define the term "tributary" for purposes of their proposed rule as a water feature that includes a bed and banks and an ordinary high water mark, which are characteristics that are produced by flowing water. In contrast, water features that do not exhibit these characteristics would not be jurisdictional. With respect to water distribution systems, the agencies did not intend with their proposed rule to change the status quo with respect to such systems. During the public comment period, the agencies have received many comments on these issues, and the agencies look forward to reviewing all comments we have received to ensure that our final rule is as clear and possible.

Finally, your October 24 letter raises questions regarding maps that use data developed by the U.S. Geological Survey and the U.S. Fish and Wildlife Service and show locations and flow patterns of many of the nation's waterways. These maps do not show the scope of waters historically covered under the Clean Water Act or proposed to be covered under the EPA's proposed rule.

America thrives on clean water. Clean water is vital for the success of the nation's businesses, agriculture, energy development, and the health of our communities. We are eager to define the scope of the Clean Water Act so that it achieves the goals of protecting clean water and public health, and promoting jobs and the economy, in a way that works for Arizonans as well as all Americans.

Thank you again for your letters. We look forward to working with Congress as our Clean Water Act rulemaking effort moves forward. Please contact me if you have additional questions on this issue, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836.

Sincerely,

A handwritten signature in black ink, reading "Kenneth J. Kopocis". The signature is written in a cursive, flowing style.

Kenneth J. Kopocis
Deputy Assistant Administrator



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OFFICE OF WATER

The Honorable John McCain
United States Senate
Washington, D.C. 20510

Dear Senator McCain:

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Kenneth J. Kopocis
Deputy Assistant Administrator